

Montana Water Court  
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**FILED**  
01/03/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
40D-0006-R-2022  
Nordlund, Julia  
4.00

IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
BIG DRY CREEK - BASIN (40D)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANTS: Grace L. DeSaye; Joseph L. DeSaye

**CASE 40D-0006-R-2022**

40D 169373-00

OBJECTOR: USA (Dept of Interior Bureau of Land Mgmt)

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## MASTER'S REPORT

### PROCEDURAL HISTORY

The claim in this case is owned by Grace and Joseph DeSaye (both deceased). The claim received objections from United States of America (Bureau of Land Management).

On August 26, 2022, the claim was consolidated into Water Court Case 40D-006-R-2022. Claimants and Objector were ordered to attend a telephonic status conference. The status conference was held on September 20, 2022, and none of the parties appeared.

The Court set a filing deadline for Objector to file documentation to show cause why the Objection should not be dismissed. On September 28, 2022, BLM filed its response and documentation clarifying how to resolve its Objection. The Court has attempted to serve Claimants these orders but has been unable to find an address for DeSayses or their representatives.

### FINDINGS OF FACT

1. Claim 40D 169373-00 is a direct from source stock claim from Sand Creek. BLM objected to the claim based on the place of use and point of diversion location.
2. BLM requests to refine the point of diversion and place of use to remove the property located on federal lands.
3. The map included in the filing supports this removal. The updated POD and POU are as follows (POD ID 1 did not change):

2			NE NW	18	17N	38E	GARFIELD
Period of Diversion:	JANUARY 1 TO DECEMBER 31						
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE						
3 4			SWNE	9	17N	38E	GARFIELD
Period of Diversion:	JANUARY 1 TO DECEMBER 31						
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE						
4 5			NWSE	9	17N	38E	GARFIELD
Period of Diversion:	JANUARY 1 TO DECEMBER 31						
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE						
5 6			SW	9	17N	38E	GARFIELD
Period of Diversion:	JANUARY 1 TO DECEMBER 31						
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE						
Period of Use:	JANUARY 1 TO DECEMBER 31						
Place of Use:	ADD POD ID3 S2NW SEC. 18 17N 38E						
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NE NW	18	17N	38E	GARFIELD
2 3			S2NW SEC 18	17N 38E			
2 3			S2	8	17N	38E	GARFIELD
3 4			SW	9	17N	38E	GARFIELD
4 5			SWNE	9	17N	38E	GARFIELD
5 6			NWSE	9	17N	38E	GARFIELD
6 7			NWNE	8	17N	38E	GARFIELD

4. Claimants have not filed any response to these proceedings and have not updated ownership or addresses.

### CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

2. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R. Sanctions applied against claimants may include termination of the water right claim. Rule 22, W.R.Adj.R.

3. Active participation by water users, especially claimants, is imperative for the accuracy of the statewide adjudication effort. *In re Korman*, 2014 Mont. Water LEXIS 17, \*6. Further, “[t]he time required to process these cases is extended substantially when litigants do not comply with deadlines imposed by the Court.” *Huntsman v. Huntsman Ranch Co.*, 2015 Mont. Water LEXIS 2, \*6.

4. Claimants have failed to participate meaningfully in this case, despite being given multiple opportunities through which to do so. Accordingly, the record supports the changes to the above-captioned claim as a sanction for failing to comply with this Court’s previous Orders.

### RECOMMENDATIONS

Upon review of the record in this case, the above changes should be adopted. Post Decree Abstracts of Water Right Claims are attached to this Master’s Report to confirm the changes have been made in the state’s centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Grace DeSaye  
1305 Ike Ave  
~~Havre, MT 59501-5137~~  
\*\*\*Deceased\*\*\*

*No Forwarding Address*

Joseph L. DeSaye  
1400 4th St S  
~~Great Falls, MT 59405~~  
\*\*\*Deceased\*\*\*

*No Forwarding Address*

**Service Via Electronic Mail:**

Eve McDonald, Attorney  
US Dept of Justice-ENRD  
999 18<sup>th</sup> Street, South Terrace Suite 370  
Denver, CO 80202  
(303) 844-1381  
[evelyn.mcdonald@usdoj.gov](mailto:evelyn.mcdonald@usdoj.gov)  
[MontanaBasins.ENRD@USDOJ.GOV](mailto:MontanaBasins.ENRD@USDOJ.GOV)

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**BIG DRY CREEK**  
**BASIN 40D**

**Water Right Number:** 40D 169373-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

GRACE L DESAYE

\*\*\*DECEASED\*\*\*

1035 SCOTT DR #252

PRESCOTT, AZ 86301

JOSEPH L DESAYE

\*\*\*DECEASED\*\*\*

1400 4TH ST S

GREAT FALLS, MT 59405

**Priority Date:** JULY 31, 1907

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SAND CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2	8	17N	38E	GARFIELD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		NENW	18	17N	38E	GARFIELD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		S2NW	18	17N	38E	GARFIELD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		SWNE	9	17N	38E	GARFIELD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		NWSE	9	17N	38E	GARFIELD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

6 SW 9 17N 38E GARFIELD

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENW	18	17N	38E	GARFIELD
2			S2NW	18	17N	38E	GARFIELD
3			S2	8	17N	38E	GARFIELD
4			SW	9	17N	38E	GARFIELD
5			SWNE	9	17N	38E	GARFIELD
6			NWSE	9	17N	38E	GARFIELD
7			NWNE	8	17N	38E	GARFIELD

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**Remarks:**

IMPLIED CLAIM NO. 40D 211699-00 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.